PATENT

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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| Applicants : | Filepp et al. | Group Art Unit: | To Be Assigned [2302] |
| Serial No. : | To Be Assigned [Continuation of 08/740,043] | Examiner: | To Be Assigned [M.B. Geckil] |
| Filed : | September 18, 1997 | | |
| For : | INTERACTIVE COMPUTER NETWORK AND METHOD OF OPERATION | | |

REQUEST FOR DECLARATION OF AN INTERFERENCE UNDER 37 C.F.R. §1.604

Honorable Commissioner of Patents and Trademarks
Washington, DC 20231

Sir:

Pursuant to the provisions of 37 C.F.R. §1.604, Applicants respectfully request that an interference be declared between the above-identified patent application and a patent application which Applicants have reason to believe is pending in the name of Charles E. Hill and is directed to a system for updating a program on a remote computer.

Applicants have reason to believe that Applicants' Claims 33-38, added by a Preliminary Amendment filed contemporaneously herewith and incorporated by reference herein, correspond exactly or substantially to Claims 66-71 in said pending application of Charles E. Hill. Applicants also have reason to believe that the Hill application claims priority from U.S. Application Serial No. 866,867, filed April 10, 1992, from which U.S. Patent No. 5,528,490 issued on June 18, 1996. The file history of Hill Application Serial No. 866,867 indicates that Claims 66 to 71 of the original Hill application were the subject of a restriction requirement by the Examiner and were eventually cancelled before U.S.

Patent No. 5,528,490 issued. Applicants have reason to believe that Hill filed a divisional application to seek a patent on Claims 66-71 and that such divisional application is now pending.

The instant application, filed contemporaneously herewith, is a continuation of pending Application Serial No. 08/740,043 filed October 23, 1996 which is now pending ("the '043 application") and is entitled to a priority date of at least July 28, 1989 through a series of benefit applications, the earliest of which was filed July 15, 1988. The instant application was filed specifically to provoke an interference with the pending Hill application by presenting claims therein that correspond exactly or substantially to the same subject matter claimed in Hill Claims 66-71 identified above. Applicants' Claims 33-38 herein are supported by the Filepp et al. disclosure as shown by the Preliminary Amendment submitted contemporaneously herewith. Applicants should be named as the senior party in the interference because Hill's earliest effective filing date is April 10, 1992, which is later than the effective filing date of July 28, 1989 to which Applicants are entitled.

1. Proposal Of Count

Applicants propose as the Count for the interference Claim 66 of the Hill application and Claim 33 of the present application.

Proposed Count

A system for automatically updating a program stored in a remote computer, the system comprising:

a remote computer including a remote memory for storing a program and a remote revision status,

the remote program revision status indicating the revision level of the program stored in the remote memory;

a main computer including a main memory for storing the latest revisions of the program revision status,

the main program revision status indicating the revision level of the program stored in the main memory;

means for transmitting the remote program revision status from the remote computer to the main computer;

means for comparing the remote program revision status to the main program revision status;

means for determining which portions of the program stored in a main memory are different from the program stored in the remote memory;

means for transmitting updated portions of the program stored in the main computer to the remote computer;

means for replacing portions of the program stored in the remote computer with updated portions of the program received from the main computer; and

means for transmitting the new program revision status from the main computer to the remote computer.

2. Identification Of Claims Corresponding To Proposed Count

With entry of the Preliminary Amendment submitted contemporaneously herewith, all claims of the Filepp et al. and Hill applications are believed to be directed to the same subject matter and correspond to the proposed Count.

A. Claims of Hill Patent Application

Claims 66 to 71 of the Hill patent application correspond to the proposed Count. The proposed Count is believed to correspond exactly to Claim 66 of the Hill patent application and dependent Claims 67 to 71 also are believed to correspond to the proposed Count.

B. Claims of Applicants

New Claims 33 to 38 correspond to the proposed Count. Instant Claim 33 has been copied from Hill Claim 66 and is thus the same as the proposed Count. Dependent

Claims 34 to 38 are copied from Hill Claims 67-71 and also correspond to the proposed Count.

3. Filepp Et Al. And Hill Claim The Same Subject Matter

A. The Filepp Et Al. System Is Directed To The Same Subject Matter As The Hill Application Claims

The Filepp et al. system, like that disclosed in the later Hill patent application, was designed to reduce the time and cost required to deliver interactive applications or information requested by subscribers for presentation at remote subscriber terminals. The subscriber terminals comprise a remote personal computer at which reception software is maintained. Each remote terminal is called a subscriber reception system ("RS").

To realize reduced application delivery time and delivery cost, the Filepp et al. system is fashioned to minimize the network data traffic required to present subscriber-requested applications or information. This is accomplished by enabling each subscriber RS to perform a substantial portion of the data processing necessary to generate requested applications, such as catalog shopping, travel planning, news review, etc., and by enabling the RSs to reuse the data and programs employed in presenting applications. Thus, a data storage facility is provided at each subscriber RS for retaining at least a portion of the data required to run requested applications.

Further, because of the limited storage resources typically available at a RS, the program code and display data that make up applications are organized as data objects. Applications can thus be distributed in the network such that at least some of the objects required to produce subscriber-requested applications are likely to be found at the subscriber's RS, and to the extent objects required to present the application are unavailable at the respective RSs, those objects may be obtained on request from a main computer -- via what is called the network object delivery system -- which includes the network host and communication concentrator units.

As a further aspect of the Filepp et al. system, objects are maintained at the respective RSs in accordance with a storage eligibility parameter which is dependent upon,

inter alia, the tendency of the respective application or program objects and the data they contain to change over time. Objects may contain, e.g., program instructions (i.e., portions of a program) or data that vary little or slowly over time, i.e., constant data, having a high storage eligibility; and objects may include program instructions or data that quickly changes over time; i.e., variable data, having a low storage eligibility. In this regard, to the extent objects and their associated program instructions or data change very slowly with time; i.e., are constant, they may be afforded persistent storage status at the remote computer -- i.e., RS -- subject only to updating for currency if they do become stale; and, to the extent objects and their associated data change quickly with time, i.e., are variable, they may be afforded no continuing storage at the RS, so that such objects are requested from a main computer -- i.e., the network delivery system -- when required.

Additionally, in accordance with the Filepp et al. system design, objects are provided with a version identification to assure currency of objects stored at a subscriber RS. At the time a subscriber requests information which necessarily involves some application, the subscriber's RS calls for the objects required to generate that application from the RS storage facility. For objects stored locally (i.e., constant data), the object version identifications are transmitted to the network delivery system (i.e., main computer) and checked there to assure currency of the respective stored objects. If the object version is current, the network delivery system returns a message to the RS denoting that the object can be used. If the version identification indicates the object is not current, a new, current, object is sent to the RS.

If objects required for the application are not stored locally, for example, where the objects include quickly changing data, those objects will be sought and obtained from the network delivery system. As objects required to generate the requested application are collected at the RS, the application is presented to the subscriber.

In sum, the Filepp et al. system, like the system of Hill, uses (a) constant program instructions and data stored at a remote RS which is version checked when accessed and updated from the network delivery system (or main computer) if necessary and (b) variable program instructions and data which is accessed from the network delivery system when it is requested by a user at the remote RS. Thus, the claims of Filepp et al., copied

from the claims of the Hill application, are directed to the same subject matter as the claims of Hill.

B. Although Hill and Filepp Et Al. Use Different Terminology, They Are Directed To The Same Subject Matter

Hill's claims refer to storing and transmitting data and programs between a user's computer and another computer remote from the user's computer via a modem type connection. Filepp et al's disclosure refers to the transmission of applications containing data and program instructions (i.e., portions of a program) called "objects" between a user's computer and a network delivery system.

Hill's claims refer to a user's computer as "remote". Hill's claim terminology for a computer remote from the user's computer which supplies updated constant data and programs and variable data and programs to the user's computer is "main" computer. Filepp et al's terminology for the user's computer is "reception system" or "RS". Filepp et al's disclosure refers to the main computer which transmits data and programs to the user's computer as a "network computer", "host computer", "concentrator" or "server", collectively a "network delivery system".

Hill's claim terminology for data and programs that do not change frequently and are thus stored at a user's computer is "constant". Hill's claim terminology for data and programs that change frequently and are thus not stored at a user's computer between sessions is "variable". Filepp et al's objects comprised of data and program instructions (i.e., portions of a program) fall within a broad range of susceptibility to change or update. Constant and variable data and programs as described and claimed by Hill are actually subsets of the range of data and program permanency described by Filepp et al.

Hill's claim terminology for an indicator of program and data currency, i.e., whether a program or data is stale or is the most current available is "revision status". Filepp et al's terminology for program and data currency is "version id". Filepp et al's terminology for an indicator of the propriety of storing programs or data at a user's computer is "storage candidacy value".

4. Effective Filing Date

Applicants are entitled to a priority date of at least July 28, 1989 because the specification and drawings of the above-identified application are identical in all pertinent respects to the specification and drawings filed in each patent application to which Applicants claim benefit under 35 U.S.C. § 120 ("the benefit applications") beginning with at least the continuation application filed July 28, 1989. The benefit applications are U.S. Serial No. 08/740,043, filed October 23, 1996, now pending; which is a division of U.S. Serial No. 08/158,026, filed November 26, 1993, which issued January 14, 1997 as U.S. Patent No. 5,594,910; which is a division of U.S. Serial No. 07/388,156, filed July 28, 1989, which issued September 13, 1994 as U.S. Patent No. 5,347,632. Application Serial No. 07/388,156 is a continuation-in-part of U.S. Serial No. 07/328,790, filed March 23, 1989, now abandoned; which is a continuation-in-part of U.S. Serial No. 07/219,931, filed July 15, 1988, now abandoned.

As shown in the Preliminary Amendment submitted contemporaneously herewith, Applicants' claims 33 to 38 are fully supported by the disclosure in the specification and drawings of the above-identified patent application and therefore are also supported by the specification and drawings of each of the benefit applications identified above going back to at least the benefit of U.S. Serial No. 07/388,156. Because Applicants' benefit application filed July 28, 1989, U.S. Serial No. 07/388,156, fully supports claims 33-38 as shown in the Preliminary Amendment submitted herewith, Applicants are entitled to an effective filing date of at least July 28, 1989.

## CONCLUSION

Applicants believe that they have complied with the requirements of 37 C.F.R. §1.604 and respectfully request that an interference be declared between the pending Hill application identified above and the instant application with the proposed Count herein serving as the Count.

Respectfully submitted,

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September 18, 1997

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